

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

UNITED STATES OF AMERICA,

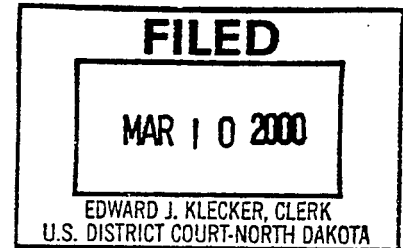
Plaintiff,

v.

CIVIL ACTION NO. A2-00-30

BENSON COUNTY, NORTH DAKOTA;
BENSON COUNTY BOARD OF
COMMISSIONERS; JOHN GRANN,
CURTIS HVINDEN, BARRY COX,
EDWARD RIPPLINGER, and
ERLING KARLSBRAATEN, in their
official capacity as members
of the County Board of
Commissioners; and
FAY HUFFMAN, in her official
capacity as the County Auditor
and the County Administrator of
Elections for Benson County,
North Dakota,

Defendants.



CONSENT JUDGMENT AND DECREE

The United States filed this action to enforce Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 ("Section 2"). The complaint alleges that the current at-large method of electing the members of the Benson County Commission results in Native American citizens having less opportunity than white citizens to participate in the political process and elect candidates of their choice for the county commission in violation of Section 2.

The parties, through counsel, have conferred and agree that it is in the best interest of the citizens of Benson County that this lawsuit be resolved without the expense of protracted,

costly and potentially divisive litigation. Accordingly, the parties have entered into the following Consent Judgment and Decree as an appropriate resolution of this action.

FACTUAL STIPULATION OF THE PARTIES

The parties stipulate as follows:

1. This Court has jurisdiction of the action pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.

2. The parties agree that one of their purposes in entering into this Consent Degree and Judgment is to ensure that the elections held in 2000, under the voting districts set forth herein, and the elections held in 2002 and thereafter, under the redistricting plan to be devised after receipt of the 2000 Census, shall be in compliance with Section 2.

3. Defendant Benson County is a political and geographical subdivision of the State of North Dakota located in the central portion of the state.

4. Defendant Benson County Commission is the governing body of Benson County established under the laws of the State of North Dakota.

5. Defendant Benson County Commission is composed of five members elected to four-year, staggered terms. Candidates qualify for the County Commission in both the primary and general elections on the basis of five residency districts, and candidates are required to run from a residency district in which the candidate resides. Voting in both the primary and general elections is on an at-large basis.

6. Both the primary and general elections for the county commission are held on a non-partisan basis. The two candidates who receive the largest number of votes countywide in the primary advance to the general election.

7. The non-partisan primary election for the county commission coupled with the staggered term and residency requirements narrows the field of candidates, thereby ensuring head-to-head races in the general election and enhancing the likelihood that Native American voters will not be able to elect candidates of their choice to the county commission.

8. Defendant John Grann is the Chairman and a member of the Benson County Commission. Defendants Curtis Hvinden, Barry Cox, Edward Ripplinger, and Erling Karlsbraaten are the other elected members of the Benson County Commission. All of these defendants are sued in their official capacities.

9. Defendant Fay Huffman is the County Auditor and, pursuant to N.D. Cent. Code § 16.1-01-01 (1991), is the Benson County Administrator of Elections. The county auditor is responsible for the proper administration of state laws, rules and regulations concerning election procedures. She is sued in her official capacity.

10. According to the 1990 Census, the total population of Benson County is 7,198 persons, of whom 2,760 (38.3 percent) are Native American. According to the same census, the total voting age population of Benson County is 4,696 persons, of whom 1,380 (29.3 percent) are Native American.

11. The Native American population in Benson County is sufficiently numerous and geographically compact to constitute a majority of the voting age population in two single-member voting districts under a plan containing five districts.

12. Racially polarized voting patterns prevail in elections for the Benson County Commission, and Native American voters in Benson County are politically cohesive. In elections involving Native American candidates and white candidates for the Benson County Commission, Native American voters vote consistently for Native American candidates and white voters vote sufficiently as a bloc to defeat the Native American voters' candidates of choice.

13. No Native American candidate for the Benson County Commission has been elected to office under the at-large method of election.

14. Native American citizens within Benson County have suffered from a history of official racial discrimination in voting and other areas, such as education, employment, and housing. Native American citizens in Benson County continue to bear the effects of this past discrimination, reflected in their markedly lower socioeconomic status compared to the white population. These factors hinder Native Americans' present-day ability to participate effectively in the political process.

15. Under the totality of the circumstances, the election system for the members of the Benson County Commission results in Native American citizens having less opportunity than white

citizens to participate in the political process and elect candidates of their choice to office.

It is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over this action pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.

2. The at-large method of electing the Benson County Commissioners, operating in the totality of circumstances in Benson County, dilutes Native American voting strength in violation of Section 2 of the Voting Rights Act.

3. The defendants, their agents and successors in office, and all persons acting in concert with any of them, are permanently enjoined from administering, implementing or conducting future elections for the Benson County Commission under the current at-large election method.

4. In the June 2000 primary election and November 2000 general election, defendants shall hold elections for the commission positions presently represented by the commissioners from residency Districts 2 and 4. In the 2000 elections, current residency Districts 2 and 4 (described in detail below) shall serve as single-member voting districts. Only the voters residing in residency District 2 shall be permitted to vote in the primary and general election for the representative from District 2, and only the voters residing in residency District 4 shall be permitted to vote in the primary and general election for the representative from District 4.

5. For purposes of the 2000 primary and general elections, Districts 2 and 4 will be as described below:

a. 2nd Commissioner District: The 2nd Commissioner District consists of the following organized and unorganized townships:

- (1) Parcel # 2454-2662 located in Albert Township (Township 153 N of Range 69 W);
- (2) Parcel # 8546-8805 located in Arne Township (Township 151 N of Range 70 W);
- (3) Parcel #4440-4666 located in East Fork Township (Township 151 N of Range 71 W);
- (4) Parcel # 1-186 located in Eldon Township (Township 153 N of Range 68 W);
- (5) Parcel # 9657-9909 located in Esmond City, and Parcel # 5805-6038 located in Esmond Township (Township 153 N of Range 71 W);
- (6) Parcel # 4156-4439 located in Hesper Township including the Town of Hesper (Township 152 N of Range 70 W);
- (7) Parcel # 5280-5482 located in Isabel Township (Township 153 N of Range 70 W);
- (8) Parcel # 1886-2072 located in North Viking Township (Township 152 N of Range 69 W); and
- (9) Parcel # 6039-6280 located in Rich Valley Township (Township 152 N of Range 71 W).

b. 4th Commissioner District: The 4th Commissioner District consists of the following organized and unorganized townships:

- (1) Parcel # 9207-9342 located in the 2nd Commissioner District (Township 153 N of Range 66 W);
- (2) Parcel # 9343-9566 located in the 3rd Commissioner District (Township 152 N of Range 65 W, and Township 153 N of Range 65 W and includes Arrowhead Bluffs, East View Estates, Borstad's Estates, Arrowhead Bluff 2nd Addition); and
- (3) Parcel # 8806-9048 located in Twin Tree Township (Township 151 N of Range 65 W).

6. After defendant Benson County officials receive the results of the 2000 Census population (which are now scheduled to be received by April 1, 2001), they shall devise a new district voting plan that provides for five single-member districts. If, based on the 2000 Census data, two majority-Native American voting districts can be constitutionally drawn, defendants shall enact a plan that provides for two majority-Native American voting districts.

7. The term "majority-Native American voting district," as used in this Consent Judgment and Decree, is a voting district in

which Native Americans constitute a majority of the general population and voting age population.

8. In the event defendant Benson County officials enact a new plan that contains fewer than two majority-Native American districts after receipt of the 2000 Census, the United States shall be given an opportunity to challenge in this Court that new plan as being in violation of the terms of this Consent Judgment and Decree. If the United States challenges the districting plan devised after receipt of the 2000 Census, the burden shall be upon the defendants to demonstrate to this Court that a constitutionally acceptable plan that contains two majority-Native American voting districts cannot be constitutionally drawn in Benson County. If the defendants fail to carry this burden, this Court, after receiving districting proposals from all of the parties, shall order into effect a district voting plan to be used in elections beginning in 2002.

9. As between the County and the United States, each party shall bear all of its own costs, expenses and attorneys' fees in this case.

10. The parties shall take all steps necessary to implement the terms of this Consent Judgment and Decree.

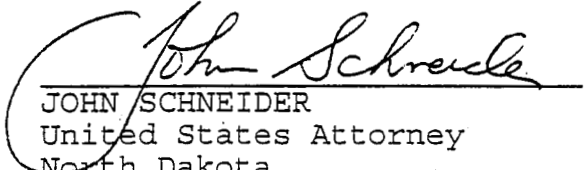
11. This Court shall retain jurisdiction over this matter to enforce the provisions of this Consent Judgment and Decree and for such further relief as may be appropriate.


Entered this 10th day of March 2000.


United States District Judge

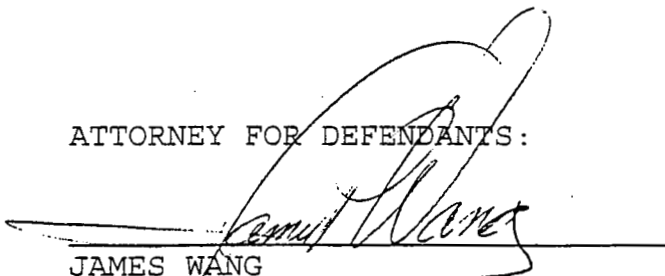
APPROVED AS TO FORM AND CONTENT:

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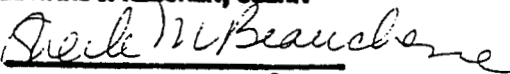
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NOTICE OF ENTRY

Take notice that the original of this copy was entered in the office of the clerk of the United States District Court for the District of North Dakota on the 10th day of March 2000

EDWARD J. KLECKER, CLERK

By: 
Deputy